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**FEDERAL ELECTION COMMISSION**  
999 E Street N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR 5537

Date Complaint Filed: September 20, 2004

Date of Notification: September 27, 2004

Date Activated: May 10, 2005

Expiration of SOL: 1/08-9/23/09

**COMPLAINANT:** Jean A. Paal

**RESPONDENTS:** VECO Corporation  
Anchorage Daily News  
William Allen

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(9)(B)(i)  
2 U.S.C. § 437g(a)(12)(A)  
11 C.F.R. § 100.73  
11 C.F.R. § 100.132  
11 C.F.R. § 111.21(a)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The complaint asserts that payments made by VECO Corporation ("VECO") to the Anchorage Daily News ("Daily News") constituted either a prohibited independent expenditure or an independent expenditure by VECO CEO, William Allen. Through a contractual arrangement, VECO regularly supplies the content for a half-page in the Op-Ed section of the Daily News called the Voice of the Times ("the Voice") and pays for the associated production costs. The Daily News exercised no editorial control over

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1 this half-page. The complaint alleges that the production costs associated with the  
2 publication of the Voice, and in particular, with columns advocating the election of  
3 then-Senate candidate Lisa Murkowski and defeat of candidate Tony Knowles were akin  
4 to paid advertisements and therefore were not entitled to the media exemption. We  
5 conclude that the media exemption applies, and recommend that the Commission find no  
6 reason to believe that any of the Respondents violated the Act, and close the file.

7 **II. FACTUAL SUMMARY**

8 The Voice is owned by VECO, a corporation, whose CEO and Chairman is Allen.  
9 See VECO response at 3. The Voice has been published within the pages of the Daily  
10 News since 1992. *Id.* Prior to that time, there were two major daily newspapers  
11 published in Anchorage, Alaska, one being the Anchorage Daily News and the other, the  
12 Anchorage Times ("the Times"). *Id.* Both newspapers had existed for approximately  
13 50 years prior to 1989 when the former editor and publisher of the Times sold it to Bill  
14 Allen, chairman and CEO of VECO. See Daily News response at 3. Allen operated the  
15 Times until 1992 when he sold most of its assets to the Daily News. *Id.* When the Times  
16 ceased operations, the Daily News and Mr. Allen "devised a unique business arrangement  
17 whereby the Daily News would devote a half page in its Op-Ed section to a feature called  
18 the Voice." *Id.* It was the intent of both parties to allow a continuing presentation of  
19 commentary by Allen and VECO through the Voice. *Id.* at 4.

20 Both parties agreed that the half page would consist of "editorials, opinion pieces,  
21 columns, letters to the editor, cartoons, photographs, comments on the news, comments  
22 on news coverage, syndicated features and other contents typically found on editorial op-  
23 ed pages, without editorial control or interference by the Daily News." *Id.* at 3. The

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1 parties' agreement prohibits VECO from using the Voice space for "advertising of any  
2 kind." *See* VECO response at 4. For the first five years following the signing of the  
3 agreement, the Daily News was responsible for payment of all production costs for the  
4 Voice and VECO was responsible for all costs associated with "writing, acquiring or  
5 editing material" published in the Voice. *Id.* at 4. Following year five of the agreement,  
6 VECO became responsible for the payment of actual production costs, without profit or  
7 other markup by the Daily News.<sup>1</sup> *Id.* The monthly pro-rata charge for production costs  
8 paid by VECO to the Daily News is less than 1/30<sup>th</sup> of the rate charged to Daily News  
9 advertisers for similar space. *Id.*

10 On December 20, 2002, U.S. Senator Frank Murkowski, having been elected as  
11 the Governor of Alaska, appointed his daughter, Lisa Murkowski, to complete his  
12 remaining senate tenure. Murkowski ran for re-election in 2004. Knowles served as  
13 Governor of Alaska from 1994 to 2002 prior to becoming a 2004 Senate candidate.  
14 During the election cycle, both the Daily News and the Voice published many  
15 editorials/commentaries on the pros/cons of voting for Knowles or Murkowski in the  
16 upcoming election.

17 Complainant alleges that since VECO pays the publishing costs for the Voice, its  
18 business arrangement with the Daily News is akin to a paid advertisement and therefore  
19 does not satisfy the media exemption. In addition, Complainant alleges that since VECO  
20 pays the publishing costs for the Voice commentaries, which advocate the election of  
21 Murkowski and/or defeat of Knowles, VECO's payments result in a prohibited corporate

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<sup>1</sup> This portion of the agreement has been extended by mutual agreement of the parties through June 1, 2007.

1 contribution to Murkowski or an independent expenditure by Allen that must be reported  
2 pursuant to the Act.

3 **III. LEGAL ANALYSIS**

4 The Act prohibits corporations from making contributions or expenditures from  
5 their general treasury funds in connection with any election of any candidate for federal  
6 office. 2 U.S.C. § 441b(a). Notwithstanding this prohibition, the Act's media exemption  
7 excludes from the definition of contribution and expenditure, in relevant part, "any cost  
8 incurred in covering or carrying a news story, commentary, or editorial by any newspaper  
9 ... unless the facility is owned or controlled by any political party, political committee, or  
10 candidate." 2 U.S.C. §§ 431(9)(B)(i); 11 C.F.R. §§ 100.73 and 100.132.

11 It is undisputed that the Daily News is a newspaper, not owned by a political  
12 party, committee or candidate. The Daily News is in the regular business of  
13 disseminating news stories, commentary, and editorials to the public, and the Voice is  
14 regularly published in the Daily News. The Voice commentaries relating to Senate  
15 candidates Knowles and Murkowski appeared in regularly published Daily News  
16 newspapers as did Voice news stories, editorials, and commentaries on other issues  
17 affecting Alaska.<sup>2</sup>

18 The fact that the Daily News has no editorial control over the Voice or that VECO  
19 pays for a portion of its production costs does not make the Voice akin to a paid  
20 advertiser. This arrangement represents a unique journalistic endeavor between the Daily

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<sup>2</sup> We have reviewed the majority of the commentaries cited by Complainant as advocating the election of Murkowski and the defeat of Knowles. Some of the commentaries do not contain any mention of either Knowles or Murkowski; some of them contain information on Knowles and Murkowski but not related to their Senate campaigns; and some do contain commentaries on the Voice's reasons for electing one candidate over another candidate. However, it does not appear that the Daily News or the Voice, in publishing these commentaries, varied from its usual format in presenting any of the commentaries or any of the specific commentaries related to the Senate campaigns.

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1 News and the Voice in an attempt to preserve the different social, economic and political  
2 perspectives provided by both publications. The parties' agreement specifically prohibits  
3 the Voice from using its allocated space for any advertising and the Daily News only  
4 charges the Voice a fraction of what advertisers would pay for similar space.

5 As for the Voice, it existed as a newspaper for at least 50 years prior to being sold  
6 to the Daily News. Since 1992, it has existed as a daily publication within the Daily  
7 News. The Voice is regularly produced by staff who work independently from the Daily  
8 News staff. It has maintained its original format of providing a conservative perspective  
9 of the social, economic and political issues affecting Alaska. In addition, there has been  
10 no allegation or information to suggest that the Voice is owned or controlled by a  
11 political party, committee or candidate.<sup>3</sup>

12 The Voice commentaries published by the Daily News relating to Knowles and  
13 Murkowski fall squarely within the press function of the Daily News. Furthermore, it  
14 appears that the commentaries have been similar in form and distributed in the same  
15 manner as other Voice commentaries, and no information has been presented to the  
16 contrary. *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 251 (1986).  
17 Therefore, for this reason and the reasons previously stated, it appears that the  
18 commentaries fall within the press function of the Daily News.

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<sup>3</sup> As an aside, the Complainant attached a copy of individual contributions made by Allen to Murkowski's Senate campaign totaling \$2,000; a contribution, totaling \$1,000, made by Allen to Denali PAC who contributed to Murkowski's campaign; and contributions totaling \$7,650 made by Allen to Northern Lights PAC who also contributed to Murkowski's campaign. *See* Attachment B of complaint. It is unclear whether Complainant intends to provide evidence of Allen and/or VECO's advocating the election of Murkowski by virtue of Allen's individual contributions to Murkowski's campaign and PACs that made contributions to Murkowski's campaign. Nonetheless, contributions made by the CEO of the corporation responsible for producing commentaries supporting Murkowski do not affect the analysis of whether the Voice qualifies for the Commission's press exemption.

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Accordingly, we recommend that the Commission find no reason to believe that any of the Respondents violated the Act, and close the file.

**IV. REQUEST FOR SANCTIONS**

On October 28, 2004, counsel for Respondents VECO and Allen filed a request for sanctions against the Complainant. The Respondents assert that the Complainant violated the confidentiality provisions of 2 U.S.C. § 437(g)(a)(12)(A) and 11 C.F.R. § 111.21(a) by providing a copy of the complaint to various newspapers without the consent of the Respondents. The Commission, in prior enforcement cases, has examined and interpreted the confidentiality provisions. In combined MURs 3170, 3169, and 3168, the Commission concluded that the "original complainant's dissemination of the complaint, through its letter to broadcasters and the subsequent discussion of the complaint allegations in news articles, does not constitute unauthorized public disclosures of a Commission notification or investigation." *See also* MURs 3573, 1244, and 298.

More recently, the Commission considered this issue in Advisory Opinion 1994-32. The Commission similarly concluded that a "complainant who communicates with the press regarding the complaint filed with the Commission would not violate the confidentiality provisions of the Act, provided such person did not disclose any information relating to any notification of findings by the Commission or any action taken by the Commission in an investigation until the case is closed or the respondent waives the right to confidentiality." Therefore, it appears that the present Complainant has not violated the confidentiality provisions of the Act either by providing a copy of the complaint to various newspapers or by publicly discussing the complaint. None of Complainant's actions amount to an improper disclosure of information relating to notification of findings by the Commission or action taken by the Commission in an

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investigation. Accordingly, Respondents VECO and Allen's request for sanctions should be denied.

V. RECOMMENDATIONS

1. Find no reason to believe that VECO Corporation, Anchorage Daily News and William Allen, violated the Act;
2. Deny the request for sanctions;
3. Approve the appropriate letters; and
4. Close the file.

8/8/05  
Date

Lawrence H. Norton  
Lawrence H. Norton  
General Counsel

Rhonda J. Vosdingh  
Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

Sidney A. Roocke  
Sidney A. Roocke  
Assistant General Counsel

Kimberly D. Hart  
Kimberly D. Hart  
Attorney

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